IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 229 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMABHAI NATHABHAI JADAV - APPELLANT NO.1
BUDHABHAI NATHABHAI JADAV - APPELLANT NO.2
BHOPO ALIAS BHUPAT NATHABHAI JADAV - APPELLANT NO.3
(ORIG. ACCUSED)

Versus

STATE OF GUJARAT - RESPONDENT

Appearance:
1. Criminal Appeal No. 229 of 1995
MRS SHILPA J UNWALLA for Appellants No. 1-3
MR KP RAVAL, APP for Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D.K.TRIVEDI

Date of decision: 08/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The appellants have challenged the judgement and order dated 19th January 1995 of the learned Additional Sessions Judge, Nadiad in Sessions Case No. 256 of 1993 convicting the appellants for the offence under section 302 read with section 34 of the Indian Penal Code and sentencing them to suffer imprisonment for life.

2. According to the prosecution, on 29th July 1993, after the informant Poonambhai had returned to his house from the field and changed his dress, his younger son Udesinh came there running at about 7.30 p.m. and told him that Mangalbhai (who was the elder brother of Poonambhai) was beaten while he was on his way home from the field by these three accused persons. Mangalbhai was the uncle of these three accused persons. According to the prosecution, Mangalbhai was not returning the dues of these three accused persons and was seeking time and there were also disputes regarding land between the parties which resulted in this crime being committed by the accused. After being informed about the incident, Poonambhai and Mangalbhai's son Ramabhai went to the spot and found Mangalbhai lying there with injuries. Injured Mangalbhai told them that these three accused persons had assaulted him. Udesinh who was the eye witness had seen these accused persons with dharia and spades assaulting his uncle from behind a nearby bush. According to the prosecution, witness Kalubhai had also seen these accused persons causing injuries to Mangalbhai with these weapons.

3. On the basis of the material on record, the trial Court came to the conclusion that it was established beyond any reasonable doubt that the accused persons had caused injuries to deceased Mangalbhai by means of dharia and spades which they were carrying and the injuries caused on the chest of Mangalbhai were sufficient in ordinary course of nature to cause death as per the medical evidence.

4. The learned counsel appearing for the appellants submitted that, in view of the nature of evidence on record, it was not possible to contend that there should be clean acquittal of these accused persons, but according to her, there was sufficient indication from the evidence on record to show possibility of there being a sudden fight between the accused persons and their uncle Mangalbhai which resulted in the death of

Mangalbhai. It was contended by the learned counsel that Mangalbhai, as per the deposition of his brother Poonambhai, who was the informant, was cutting grass in his field. The field of the accused persons was adjoining to the field of Mangalbhai. Since Mangalbhai was cutting grass, he was obviously having an agricultural implement. Dharia and spades which were in the hands of accused persons were also agricultural implements and merely from those weapons, it cannot be inferred that the accused had proceeded to the field after a premeditation for causing murder of Mangalbhai. She submitted that since some amount was due to be paid by Mangalbhai to the accused person, it is quite likely that there ensued a sudden fight between the parties at the time of the incident which resulted in the unfortunate death of the uncle of the appellants. It was submitted that the case of the appellants fell within the exception 4 of section 300 of the Indian Penal Code.

5. The learned Additional Public Prosecutor on the other hand submitted that all the three accused had gone near the field of Mangalbhai and assaulted him with dharia and spades and the manner of assault and their going away together was suggestive of the fact that they had acted in furtherance of their common intention to cause death of Mangalbhai. It was submitted that the seat of injury which was on chest and which resulted in fracture of ribs of Mangalbhai was suggestive of the intention of the accused persons to cause his death. The learned counsel argued that there was nothing on record to show that a sudden fight erupted between the parties, and therefore, there was no scope for altering conviction from section 302 read with section 34 of the Indian Penal Code to section 304 of the Indian Penal Code.

6. Udesinh, in his deposition exh.14, has stated that, on 29th July 1993, he had returned home from the school after 4.00 p.m. and he was sitting near Chinubhai's room when he saw these three accused persons coming out of their house. The accused No.1 - Ramabhai and the accused No.3 Budhabhai were having spades, while the accused No.2 Bhupatbhai was having a dharia. He has stated that they were abusingly saying that they would kill Mangal Balu and therefore, he apprehended that they were going to assault his uncle Mangalbhai. He therefore followed them and saw, while he was hiding himself, that the accused No.1 gave a blow with his spade to his uncle who fell down. A group of boys was coming in that direction and therefore, the accused No.3 Bhupat chased them away and returned to beat his uncle. All the three accused gave his uncle blows with these weapons. He

stated that he did not remember where the blows landed, but the blows were given with spades and dharia. He has stated that he thereafter rushed to inform his father and told everyone there that Mangal was beaten. Thereafter, his uncle died at about 7.30 p.m. He has stated that there were some disputes between his uncle and these persons about land. Except the omission regarding the spade blow given by the accused No.1 landing on the neck of Mangalbhai, no other contradiction or omission is brought on record. There was no reason for this witness to falsely implicate these three accused persons who were closely related to him. Since the incident occurred in broad day light, there was no question of any mistake in identifying them. His deposition shows that these three accused persons had assaulted Mangalbhai in the evening on 29-7-1993

7. Poonambhai, father of this witness in his deposition exh.12, has clearly stated that his son Udesinh had come and informed him that Mangal was killed by Ramabhai Nathabhai, Budhabhai Nathabhai and Bhupat Nathabhai i.e. these three accused persons. On getting this information, he had rushed to the place of incident. According to him, Mangalbhai who was injured told him that these three accused persons had assaulted him and that he was hit with a blunt part of spade on his chest. According to Poonambhai, the accused No.1 had loaned some amount to Mangalbhai for purchasing a bullock and he was asked to refund that amount, but since Mangalbhai was not having money, he told him that he would pay it later on and therefore, Mangalbhai was beaten. From the cross-examination of Poonambhai, it transpires that Mangal and Nathabhai, father of these three accused persons and this witness Poonambhai were all brothers and that, out of the three bighas of land, one bigha of land had come to the share of each of these three brothers. It also appears that the fields of Mangalbhai and Nathabhai were adjoining to each other.

8. From the deposition of Kalubhai exh.15, it transpires that at the time of the incident, this witness was passing from Narsinhbhai's tubewell. He has stated that, at that time, he had seen these three accused persons and Mangalbhai quarrelling. Thereafter, there was `maramari' between them and he therefore ran away. He does not know what happened in that `maramari'. He has stated that the `maramari' was being done with spade and dharia. The accused No.1 was having spade, while the accused No.3 was having a dharia and they were beating Mangalbhai. Since he became nervous, he ran away. He has denied the suggestion that these accused persons were

not having the weapons. Witness Udesinh in his cross examination has stated that he had seen this Kalubhai passing from the place of incident and after seeing the incident, Kalubhai had run away. There is no reason suggested for not relying upon the deposition of Kalubhai who had seen these accused persons assaulting Mangalbhai with spades and dharia.

9. It has come in the deposition exh.27 of panch Ghanshyambhai that the accused No.1 had discovered under panchnama exh.28 dharia which was having blood stains of blood group `AB' which as per the serologist's report exh.35, was the blood group of the deceased. Two spades were also produced under the panchnama exh.28 by the accused. The medical evidence consisting of the deposition of Dr. Dilipkumar exh.22 and the post mortem notes exh.24 conclusively establish that the death of Mangalbhai was caused due to cardio respiratory arrest as a result of multiple chest injuries. Dr. Dilipkumar has deposed that the injuries which are described in the post mortem notes exh.24 were possible by the muddamal weapons.

10. The evidence thus discloses that all the three accused had in a concerted manner and in furtherance of their common intention assaulted Mangalbhai who had refused to repay at that time the amount which was due to be repaid to the appellant No.1 by him and caused his death. However, as noted above, witness Kalubhai in his deposition exh.15 has stated that he had seen these three accused persons and Mangalbhai quarreling and that thereafter, there was a `maramari' i.e. a fight between them and therefore, he ran away. The word `maramari' is significant and indicates that there was a fight between the two sides. According to Poonambhai, Mangalbhai was cutting grass and therefore, obviously, he was having some implement which he used for cutting the grass. These three accused persons were having spades and a dharia which are also agricultural implements and they were the owners of the adjoining field which means their presence there was not unnatural. In view of the positive evidence of Kalubhai that there was initially a quarrel and then `maramari' between the accused and Mangalbhai, it appears to us that a sudden quarrel and fight may have ensued between the uncle and his three nephews on the question of return of the amount loaned by the accused No.1 to Mangalbhai, and without there being any premeditation.

11. The learned Additional Public Prosecutor submitted that the deposition of Udesinh suggested that

there was premeditation. But if we closely examine his deposition, it becomes clear that he had only vaguely stated that the accused persons had come out of their house abusingly saying that they wanted to kill Mangal Balu. The exact words used are not stated nor is it made clear as to which of the accused spoke the words. It is somewhat doubtful that three brothers coming from their house in open, would declare in presence of nobody around there, that they were going out to kill Mangal Balu. No premeditation on the part of these three accused persons can be inferred from this vague and general statement of Udesinh. From the inquest panchnama exh.17, it appears that the collar of the shirt which was worn by the deceased was torn away. The panchnama exh.26 of the scene of offence records that the collar was recovered from the place of the incident under that panchnama. This collar corresponded to the shirt which was worn by the deceased as per the report exh.36 of the Forensic Science Laboratory. It is recorded in the panchnama exh.26 that at the scene of offence, the panchas had noticed from the footprints that over an area of about ten feet, there were signs of scuffle. It is also recorded that the rice crop standing in the field was crushed which indicated the scuffle.

12. In view of the above facts, which emanate from the material on record, it appears to us that the possibility of there having occurred a sudden quarrel between Mangalbhai and these three appellants cannot be ruled out and it appears that in a heat of passion and upon a sudden fight, the accused persons had hit their uncle Mangalbhai with the blunt portions of the spades which caused injuries on his chest and fracture on his ribs due to that. The injury inflicted by dharia is on the leg. Having regard to the nature of injuries, it cannot be said that the accused acted in a cruel or unusual manner. We are therefore of the view that the accused are entitled to the benefit of exception 4 to section 300 of the Indian Penal Code. However, having regard to the concerted manner in which they acted and gave several injuries with the agricultural instruments, we hold that though the offence committed is culpable homicide not amounting to murder falling under exception 4 to section 300 of the Indian Penal Code, the death of Mangalbhai was caused by acts done with the intention of causing such bodily injuries as were likely to cause death and therefore, the offence falls in the first part of section 304 of the Indian Penal Code.

13. Having regard to the facts of the case, in our opinion, the proper sentence to be imposed on these

accused persons would be ten years' rigorous imprisonment and a fine of Rs.500=00. We therefore pass the following order :

:: ORDER ::

The appeal is partly allowed. The conviction of these three accused - Ramabhai Nathabhai Jadav, Budhabhai Nathabhai Jadav and Bhopo alias Bhupat Nathabhai Jadav is altered from section 302 read with section 34 of the Indian Penal Code to section 304 Part I read with section 34 of the Indian Penal Code and each of them is sentenced to suffer rigorous imprisonment for a term of ten years and pay fine of Rs.500=00, in default to undergo further rigorous imprisonment for one month.

NOVEMBER 08, 2001 [R.K.ABICHANDANI, J.]

[D.K.TRIVEDI, J.]

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